Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	
Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review -	)	
Streamlined Contributor Reporting	)	
Requirements Associated with	)	
Administration of Telecommunications	)	CC Docket No. 98-171
Relay Service, North American Numbering	)	
Plan, Local Number Portability, and	)	
Universal Service Support Mechanisms.	)	
	)	
Telecommunications Services for	)	
Individuals with Hearing and Speech	)	
Disabilities, and the Americans with	)	CC Docket No. 90-571
Disabilities Act of 1990.	)	
	)	
Administration of the North American	)	
Number Plan and North American	)	CC Docket No. 92-237
Numbering Plan Cost Recovery	)	NSD File No. L-00-72
Contribution Factor and Fund Size.	)	
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES INITIAL COMMENTS ON STAFF STUDY ON CONTRIBUTION MECHANISMS AND REPLY COMMENTS ON CONTRIBUTION MECHANISMS

Executive Summary

The National Association of State Utility Consumer Advocates ("NASUCA")[1] presents these comments on the Federal Communications Commission ("Commission") Staff study of alternative methodologies for assessing contributions to the federal universal service support mechanism ("Staff Study"), together with reply comments responding to initial comments on the alternative mechanisms.[2] The Staff Study shows clearly that the current revenue-based mechanism is sustainable for at least the next four years; there is no "death spiral" to be seen.[3] The Staff Study also shows clearly that, compared to the current mechanism, each of the three alternative methodologies unreasonably burdens residential and small business consumers, and unreasonably allows interexchange carriers to avoid responsibility for contributing to the federal universal service fund ("USF"), contrary to 47 U.S.C.254(d). This is reason enough to reject each of the three alternatives.[4]

NASUCA's review of the Staff Study has greatly influenced the responses to the initial comments on the Second Further Notice of Proposed Rulemaking. Those initial

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[1] NASUCA is an association of 42 consumer advocates in 40 states and the District of Columbia. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. See, e.g., Chapter 4911, Ohio Rev. Code.

[2] These comments are combined pursuant to an order of the Deputy Chief of the Telecommunications Access Policy Division (DA 03-1009; rel. March 27, 2003) which allowed parties to file a single document in reply to comments filed pursuant to the Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) ("Second Further Notice") and in response to Public Notice, FCC 03-31 (rel. February 26, 2003) ("Public Notice") seeking comment on the Staff Study.

[3] Coalition for Sustainable Universal Service ("CoSUS") Comments (April 22, 2002) at 23.

[4] It is assumed here that, under the methodology of the Staff study, IXCs, LECs and CLECs alike are permitted to pass through their USF contributions to their customers. It is also assumed that the pass-through is accomplished by a line item on end users' bills. This assumption is made without accepting that this line item pass-through is appropriate. See, e.g., NASUCA Opposition to Petitions for Reconsideration.

comments show two things: First, that the predictions of a "death spiral" for the revenue-based mechanism are exaggerated, and that the flaws in the current mechanism can be corrected. Second, that for each of the alternative proposals, proponents are out-numbered and out-argued by opponents, leaving none of the alternatives intact enough to be adopted. The initial comments demonstrate that the revenue-based mechanism -- with improvements in addition to those adopted in December 2002 -- remains the best choice. As previously noted, the current revenue-based mechanism is, in concept, both equitable and non-discriminatory, and has been upheld by the courts. See *Texas Office of Public Utility Counsel v. FCC* ("*TOPUC I*"), 183 F.3d 393, 426-430 (5th Cir. 1999).

A. Introduction

In the Second Further Notice, the Commission asked for comment on three specific contribution mechanisms. In comments filed February 28, 2003, NASUCA again demonstrated that major structural changes to the contribution mechanism are not necessary, because the interstate revenue base on which USF contributions should be assessed is not in fact "eroding." This renders the three specific mechanisms that were the subject of the Staff Study fundamentally unnecessary. Indeed, the Staff Study itself provides no support for the adoption of any of the alternatives. Instead, the Staff Study provides compelling reasons why none of the three should be adopted.

The Commission is to be commended for directing the Staff to perform the study. See Public Notice at 1. The Staff Study provides a uniform basis for comparing the three alternative proposals to the current regime. The Staff Study models the USF need consistently across the current mechanism and the three connection-based proposals. The

Staff Study also models, for the current mechanism and the three proposals, the expected impact on customers and carriers of the various mechanisms.

These results of the Staff Study are significant. The Commission sought comment on the assumptions and projections in the Study. Public Notice at 2. NASUCA's approach to the analysis was to test the Study's sensitivity to changes in certain of the assumptions. The results of the Study under those conditions are also important. These comments focus on the *results* of the Study, rather than its methodology.

The current mechanism bases carriers' contributions on their interstate revenues. Proposal 1 in the Staff Study would impose a flat charge for each end-user connection depending on the nature or capacity of the connection; there would also be a minimum contribution obligation on all interstate telecommunications carriers. Staff Study at 19. Proposal 2 would assess connections based on capacity; there would also be an assessment on revenues for non-presubscribed services. *Id*. at 20. Proposal 3 would base contributions on assigned telephone numbers; there would be the same minimum contribution as found in Proposal 1. *Id*.

Table A on the next page summarizes some of the results of the Staff Study.

TABLE A
SUMMARY OF STAFF USF STUDY

	Current and Projected Assessments Under Revenue-Based Methodology			**Proposal 1 Connections-Based**		**Proposal 2 Connections-Based**		**Proposal 3 Numbers-Based**	
	2002	**2005**	**2007**	**2005**	**2007**	**2005**	**2007**	**2005**	**2007**
Projected revenue-based contribution factor*	0.080	0.100	0.114	0.0100	0.0100	0.0100	0.114	0.0100	0.0100
USF program requirements ($ millions)	$5,849	$6,861	$7,368	$6,861	$7,368	$6,861	$7,368	$6,861	$7,368
Share of contributions by industry segment									
IXC	59%	45%	41%	22%	22%	32%	29%	14%	13%
LEC	26%	29%	32%	47%	45%	22%	20%	57%	55%
CMRS	15%	25%	27%	30%	31%	42%	43%	30%	31%
Average monthly pass-through charge per household	$ 2.14	$ 2.27	$ 2.38	$ 2.27	$ 2.34	$ 3.60	$ 3.81	$ 2.58	$ 2.68
Single-line business connection per month	$ 0.43	$ 0.59	$ 0.66	$ 1.03	$ 1.05	$ 1.41	$ 1.45	$ 1.00	$ 1.02
Percentage of fund met from Residential assessments	39%	42%	42%	43%	42%	67%	68%	46%	45%
Percentage of fund met from Business assessments	61%	58%	58%	57%	58%	33%	32%	54%	55%

*** Under the three proposals, a minimum contribution is based on interstate revenues.**

The following comments focus on the Staff Study. After issues relating to the Staff Study are addressed, responses are provided to other parties' initial comments on the Second Further Notice.

B. The results of the Staff Study show that there is no need for substantial changes to the USF contribution mechanism.

The Commission stated that "many parties agree that a connection-based contribution methodology will best ensure the long-term viability of the Commission's universal service mechanisms…." Second Further Notice, ¶5. Yet the Staff Study projects essentially the same contribution base in 2007 as in 2002. Under that projection, there is no "death spiral," even given the 26% increase in USF program requirements that produces an increase in the contribution factor from 0.080 in 2002 to 0.114 in 2007. An increase in the contribution factor of 0.0068 per year for five years is manageable.

Thus the USF is sustainable for at least the next four years, under current conditions as projected by Staff. One only has to look back four years from the present to be reminded that in telecommunications four years is an eternity. In early 1999, for example, it was still believed that the traditionally-assessed interstate toll revenue base would continue to grow. If changes are made to the current mechanism, even these impacts can be eased.

C. The results of changes to the Staff Study also show that there is no need for a connection-based mechanism.

The changes accomplished in the Report and Order -- included in the Staff Study -- contribute mightily to the sustainability of the mechanism. One key change was the increase in the wireless safe harbor to from 15% to 28.5%.

NASUCA has been able to alter some of the assumptions and inputs of the Staff Study in order to test the sensitivity of the study to additional changes in the assumptions or in the revenue-based mechanism itself.[5] Clearly, before adopting the substantial changes to the mechanism contained in any of the three proposals reviewed in the Staff Study, the Commission should carefully examine the possibilities available under the current mechanism.

One of the further changes that should be considered is increasing the wireless safe harbor from its recently adopted 28.5% level, or eliminating the safe harbor entirely. The safe harbor was adopted in 1997 based on the difficulties wireless carriers said they had in calculating an interstate percentage (Report and Order, ¶ 20). Six years later, those difficulties should not be allowed to trump the need for an adequate contribution base for the USF.

Applying such changes to the Staff Study is not easily done, however. This is because the safe harbor allows wireless carriers to report either their actual interstate revenues or the safe harbor percentage. The general impact is that carriers with interstate percentages less than the safe harbor will report actual numbers, while carriers with higher interstate percentages will use the safe harbor. The result is that under the 28.5% safe harbor, an aggregate of 22.2% of wireless revenues were treated as interstate in the Staff Study. Thus as a preliminary step in altering the Staff Study, an assumption was made that 25% of total wireless revenues were interstate, as a conservative increase to the number in the Staff Study. Keeping all other things equal, the 2007 revenue-based

[5] Appendix A describes the mechanics of the changes made to the Staff Study. It is important to note that these changes are to inputs or assumptions of the Study, rather than to the algorithms used in the Study.

contribution factor would then be 0.110, compared to the Staff-projected factor of 0.114. If it is assumed that 30% of wireless revenues were interstate, the 2007 contribution factor drops to 0.103. These changes reasonably reflect the increasing interstate usage by wireless customers.

Wireless revenues represent just one piece of the revenue pie and thus one piece of the contribution mechanism. The Staff Study assumes that the overall revenue contribution base will increase almost 5% from 2002 to 2003, then remain essentially constant in the years 2003, 2004 and 2005, and will then decline such that the base is back to 2002 levels in 2007. All else being equal, if that decline does not occur, and the 2007 base is equal to the projected average revenue level for 2003-2005 ($80.124 billion), the 2007 contribution factor will remain at 0.108, noticeably less than the Staff-projected 0.114 for that year. This result is of course independent of the source of the revenues added to the Staff Study.

Third, and most significantly, there is the issue of the size of the USF program requirements. The Staff Study projects that program requirements will grow by 26% from 2002 to 2007 ($5.849 billion to $7.368 billion). Again, keeping all other factors constant, if the program requirements grow by only 20% (to $7.019 billion), the 2007 contribution factor will be 0.108.

This latter result is important because, as previously discussed and as confirmed by the Staff Study, the real problem with the current USF contribution mechanism is the growth in the size of the fund itself, not the growth or lack of growth in the contribution base. Indeed, when reviewed on an annual basis, there has been and will be (according to Staff) no significant downward trend in the contribution base:

Table B

Year	Contribution base (in $ billions)	Total USF need (in $ billions)
2007 (a)	76.8	7.37
2006 (a)	78.9	7.11
2005 (a)	80.1	6.86
2004 (a)	80.2	6.62
2003 (a)	80.1	6.39
2002 (b)	76.4	5.85
2001 (b)	79.9	5.46
2000 (b)	79.5	4.53
1999 (b)	74.6	3.95
Sources: (a) Staff Study (b) Contribution Factor Public Notices		

During this period the assessed contribution base will have increased 7.5%, then declined 4.2%, but the total USF need has consistently grown by almost 87% over the period 1999-2007.

In the Further Notice of Proposed Rulemaking[6], the Commission stated that it is seeking stability in the universal service mechanism. Further Notice, ¶ 17. This sentiment was repeated in the Second Further Notice. Second Further Notice, ¶ 3. It should be clear that no mechanism can provide stability unless there is stability in the size of the USF. The size of the fund is a matter that is within the control of the Commission.

The preceding discussion takes changes to the mechanism one at a time, and individually gauges their impact on the contribution factor. NASUCA has also calculated the impact of an approach that combines 1) maintaining the revenue base at 2003-2005

[6] Further Notice of Proposed Rulemaking, FCC 02-43 (rel. February 28, 2002), 17 FCC Rcd 3752 ("Further Notice").

levels and 2) limiting the growth in the fund itself to 20%. If those two actions are taken simultaneously, the resultant 2007 contribution factor would be 0.103.

"Maintaining" the current revenue base is one thing. Adding new revenue sources to build the revenue base is another. As mentioned, eliminating the wireless safe harbor and requiring wireless carriers to pay based on their actual interstate revenues would build the revenue base.

Another source of revenue would be cable modem service and voice over Internet protocol ("VoIP"). Assessing cable modem and VoIP revenues would bring these services in line with digital subscriber line ("DSL") service, which is provided by local telephone companies and is currently part of the revenue base. The Staff Study can be altered to include cable modem and VoIP revenues in the contribution base. Doing so yields a 2007 contribution factor of 0.097. Including cable modem and VoIP revenues, assuming that 25% of total wireless revenues are interstate **and** restraining the growth in the USF to 20% yields a contribution factor of 0.090.

These various approaches, taken singly or -- preferably -- in combination, show that the contribution factor under the revenue-based mechanism can be restrained. The Staff Study, whether as presented or as altered here, provides no basis for concern significant enough to justify the massive changes required by any of the three proposals.

The lack of basis for substantial change is also shown by what the Staff Study *does not* include. The Staff Study does not include any consideration of the costs to the carriers of implementing any of the proposed mechanisms. Given the carriers' complaints about the effort required, and the cost, of minor changes to the current mechanism,[7] the costs of these fundamental structural changes cannot be ignored.

D. The results of the Staff Study show that each of the three alternative methodologies unreasonably burdens residential and small business consumers.

As Staff projects the current revenue-based mechanism, the average monthly pass-through charge per household increases slightly by 2007, up from $2.14 to $2.38. Proposal 2 (connections-based) would require the average household to pay $3.81 by 2007, a 60% increase over the result for the current mechanism. This result is so extreme as to compel rejection of Proposal 2 on its face.

For residential customers, Proposal 3 (numbers-based) would boost the current per-household assessment to $2.68 -- substantially lower than Proposal 2, but still higher than under the revenue-based mechanism. On the other hand, Proposal 3 would increase the single-line business connection pass-though by 43¢, to $1.02, instead of to 66¢ under the revenue-based mechanism.

Proposal 1 (connections-based) appears, at the level of the Staff study, to be neutral or slightly beneficial in its effect on the average residential customer compared to the revenue-based mechanism. By 2007, Proposal 1 increases the average pass-through per household by 4¢ less per month than the projection for the current mechanism.

Yet this average masks what is in fact a massive restructuring within the residential class, with contributions under Proposal 1 based on access to interstate

[7] See CC Docket 96-45 *et al.*, SBC Petition for Reconsideration (January 29, 2003) at 6; *id.*, Verizon Comments on Petitions for Reconsideration (February 27, 2003) at 4.

services rather than usage of those services. This results in a shift in USF responsibility from high-use customers to low-use customers.[8] Under Proposal 1, a residential wireline customer who makes no interstate calls will pay the same support as a residential wireline customer who makes many interstate calls.[9]

None of the arguments in support of a connection-based mechanism (Second Further Notice at ¶¶ 70-73) justify these increases and the burden they place on residential customers, especially low-use customers. In addition, each of the proposals substantially decreases the contribution assessed on the largest business customers.[10] None of the arguments in favor of a connection-based mechanism justifies this profound change in contribution responsibility.

E. The results of the Staff Study show that each of the three alternative methodologies allows interexchange carriers to avoid responsibility for contributing to the federal USF, contrary to 47 U.S.C. 254(d).

The 1996 Act directs that

> [e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and non-discriminatory basis, to the specific, predictable, and sufficient mechanism established by the Commission to preserve and advance universal service.

47 U.S.C. § 254(d). The current mechanism, based on interstate revenues, assesses carriers based on the amount of money they receive from providing interstate services.

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[8] This restructuring also takes place under the other two proposals whose prejudice to residential customers is evident from the impact on the average customer.

[9] Under the current mechanism, LECs assess customers primarily based on the subscriber line charge, which is explicitly non-traffic-sensitive. A connection-based mechanism would extend this regressive feature to all carriers and all customers.

[10] For OC-3s, DS-3s and most T-1s, the contribution responsibility of multi-line business is substantially reduced for each of the three proposals.

The connection between interstate service and USF assessment is clear. The current revenue-based mechanism is, in concept, both equitable and non-discriminatory, and has been upheld by the courts. See *TOPUC I*, 183 F.3d at 426-430.

Clearly, the proposed connection-based mechanisms allow IXCs, which remain major carriers of interstate traffic, to evade almost all responsibility to contribute to universal service, contrary to § 254(d). This is neither equitable nor non-discriminatory.

The IXC share of contributions in 2002 under the revenue-based mechanism was 59%. Staff projects that under the current revenue-based system, the IXC share will fall to 41% by 2007.[11] This 30% decline in share is principally the result of the projected 40% decline in IXC toll revenues and the increase in wireless carrier responsibility.

Yet Proposal 2 reduces the IXC 2007 share to 29% and Proposal 1 reduces the IXC share to 22%. Proposal 3 -- the numbers-based proposal submitted by AT&T -- reduces the IXC share to a mere 13%. These share declines occur even with the minimum contribution levels built into each proposal. The IXCs have not shown how such massive changes can be justified.

The Act directs that all interstate carriers shall contribute to the USF. 47 U.S.C. 254(d). To the extent that any of the proposals allow carriers to avoid that responsibility, the law is violated.

[11] Under the Staff study, all interstate toll is carried by IXCs, and all local traffic is carried by LECs. Although there is some entry into the others' markets, it remains true that LECs still do the majority of their business in local service and IXCs still do the majority of their business in toll.

F. An alternative approach to the numbers-based alternative

In the comments filed on February 28, 2003, NASUCA discussed how a number-based USF assessment system can promote number conservation only if it is based on the total numbers reserved by each carrier, rather than on numbers assigned to end users. In the FCC Number Utilization Report, this "reserved" figure is reported as "total number resources held by each carrier."[12]

Table C shows the results of a USF assessment methodology using total number resources rather than assigned numbers. The per-number assessment under such an approach is approximately 44 cents per month. The effective assessment rate per assigned number under this system would range widely across industry sectors. Such a system would, among other things, impose a greater effective USF burden on carriers that were less efficient in use of numbers. The higher effective assessments could act as a competitive disadvantage for the inefficient carrier. If one of the goals of a numbers-based system is conservation of numbers, then the system must impose costs on excessive reservation of scarce number resources. A system based only on assigned numbers would have little or no impact on number conservation.

A necessary adjunct to any number conservation proposal must be a prohibition on surcharges and line items so that incentives for number conservation would be truly effective on the carriers that make the decisions on how many numbers to reserve. If the per-number assessment were allowed to be passed through automatically to end users as a line item, any conservation incentive would be weakened substantially.

[12] FCC Numbering Resource Utilization Report (August 1, 2002).

TABLE C
USF ASSESSMENTS BASED ON
TOTAL NUMBER RESOURCES
HELD BY EACH TELECOMMUNICATIONS CARRIER

	2005	**2007**
Contributions Based on Number Resources ($000)	$6,763,000	$7,315,000
Total Number Resources Held by Carriers (000)	1,215,563	1,215,563
Toll Free Numbers (000)	25,000	27,000
Special Access & Capacity Based Numbers (000)	51,000	55,000
TOTAL NUMBER RESOURCES (000)	1,291,563	1,297,563
Assessment per Number Resource	$0.436	$0.470
Effective Assessments Based on Utilization Factors		
ILECs (52.5% Utilization)	$0.83	$0.89
CLECs (11.4% Utilization)	$3.83	$4.12
Wireless (47.2% Utilization)	$0.92	$1.00
Pagers (20.2% Utilization)	$2.16	$2.33

NOTES:
Contributions taken from FCC Staff Study; assumes minimum contribution based on 1% of interstate revenue.
Total Number Resources taken from FCC Numbering Resource Utilization Report, Aug. 1, 2002
Toll Free Numbers and Special Access taken from AT&T Exhibit 2 attached to Comments.
Growth in Toll Free Numbers and Special Access are estimates. Assumes no growth in Total Number Resources due to conservation effect.

If the Commission determines to adopt a connection-based mechanism despite the Section 254(d) problem, NASUCA urges the Commission to adopt an approach that encourages number conservation. To do so, the Commission should base the mechanism on total number resources held by each carrier, and should forbid pass-through of the USF contribution as a line item on customers' bills.

G. Reply Comments[13]

In the Second Further Notice, the Commission addressed the support for a connection-based mechanism, and proposed three specific structures for connection-based mechanisms. The Commission stated, "An analysis of the record reveals interest in a connection-based methodology…" (Second Further Notice, ¶ 4), and asserted that "many parties agree that a connection-based contribution methodology will best ensure the long-term viability of the Commission's universal service mechanisms…." *Id*., ¶5. This ignored the comments of many parties, including NASUCA, who were opposed to the adoption of a connection-based mechanism.

The presentation of three specific mechanisms in the Second Further Notice has exposed the parties' views, and shows clearly first, that each of the three proposals is opposed by far more parties than support it and second, that most of the parties supporting each proposal oppose the other two proposals.[14] This is best seen in the following chart:

[13] This responds to comments filed by ACUTA Inc. ("ACUTA"), Ad Hoc Telecommunications Users Committee ("Ad Hoc"), Allied National Paging Association ("Allied"), American Association of Paging Carriers ("AAPC"), Arch Wireless Operating Company, Inc. ("Arch"), AT&T Corp. ("AT&T"), AT&T Wireless ("AT&T-W"), Cellular Telecommunications & Internet Association ("CTIA"), Concerned Paging Carriers ("CPC"), Consumers Union, et al., Fred Williamson and Associates ("FW&A"), Montana Independent Telecommunications Systems ("MITS"), National Rural Telecommunications Association and the Organization for the Protection and Advancement of Small Telephone Companies ("NRTA/OPASTCO"), National Telecommunications Cooperative Association ("NTCA"), Nextel Communications Inc. ("Nextel"), Qwest Communications International Inc. ("Qwest"), Rainbow/PUSH Coalition (Rainbow/PUSH"), SBC Communications Inc. and BellSouth Corporation ("("SBC/BS"), Sprint Corporation ("Sprint"), Telecommunications Research & Action Center ("TRAC"), State of Texas ("Texas"), TracFone Wireless, Inc. ("TracFone"), United States Telecom Association ("USTA"), Verizon, Verizon Wireless, Virgin Mobile USA, LLC ("Virgin Mobile"), WebLink Wireless, Inc. ("WebLink"), Western Alliance and WorldCom, Inc. ("WorldCom").

[14] It should also be noted that much of the "support" for the individual proposals is qualified, based on proposed changes to the proposal or based on resignation rather than true acceptance of the proposal.

Proposal	Parties supporting	Parties opposing
Proposal 1: Flat fee per connection plus minimum contribution	Sprint (opposes minimum contribution)[15]	NASUCA, AAPC, Allied, CPC, Nextel, NRTA, NTCA, Rainbow/PUSH, TracFone, USTA, Verizon, Verizon Wireless, WebLink
Proposal 2: Flat fee for connections; revenue-based assessment on transport	Arch (fallback), FWA (fallback), NRTA, Qwest, SBC (as modified), Texas, USTA, Western Alliance (fallback), FWA	NASUCA, AAPC, Allied, AT&T, CPC, Nextel, NTCA, Rainbow/PUSH, Sprint, TracFone, Verizon Wireless, Virgin Mobile, WebLink, WorldCom
Proposal 3: Numbers	Ad Hoc, AT&T, Sprint (as modified)	NASUCA, AAPC, Allied, CPC, Nextel, NRTA, NTCA, Rainbow/PUSH, SBC, TracFone, USTA, Verizon, Verizon Wireless, Virgin Mobile, WebLink

If this were an election -- which of course it is not -- all three of the new candidates would have been defeated. The number of parties opposing each of the various proposals is relevant, however, if only because the Commission has considered the numerosity of support for the generic "connections-based" concept as a basis for further considering it. Second Further Notice, ¶ 5. Clearly, the supporters of the generic concept have no common understanding of how such a mechanism should be implemented.

In this "election," the number of parties voting for "none of the above" or "the incumbent" is also significant. The parties supporting a revenue-based mechanism -- with further improvements beyond those in the Report and Order -- include NASUCA, Allied, Arch, CPC, CTIA, CU et al, Nextel, NTCA, Qwest (as an interim measure),

[15] Sprint proposes a direct assessment on end users. Sprint at 6. 47 U.S.C. 254(d) requires that federal universal service support contributions come from carriers, not end users. This is one of the reasons why NASUCA has opposed allowing carriers to recovery their USF contribution through line items on customers' bills.

Rainbow/PUSH, TRAC, TracFone, Verizon, Verizon Wireless, Virgin Mobile (qualified support) and WebLink. The support for a revenue-based mechanism is not only numerous, but crosses all industry segments and includes consumer representatives.

By contrast, the number of those who oppose the revenue-based mechanism is dwindling, and the reasons for their opposition appear to be based on 1) unsupported speculation about the "death spiral" and 2) problems with the current mechanism that can be fixed much more easily than making the substantial structural changes required to adopt any of the connections-based proposals. Those who address problems with the current mechanism include AT&T (at 10-25), SBC (at 4-8), Sprint (at 4-6), USTA (at 3)[16] and WorldCom (at 5-16). Notably, these parties do not have consensus on a mechanism that they claim will successfully replace the revenue-based mechanism.

1. The "death spiral"

By and large those who support the notion of a "death spiral" have only generalities in their favor. For example, SBC/BS state (at 5) that the fund is in "rapid decline" and Sprint states (at 7) that the fund is in danger in the "immediate future…" They present no studies or quantitative analysis at all. The error in these positions is shown up by the Staff Study.

WorldCom cites to a study presented by CoSUS based on a model submitted by Verizon, which raised the specter of a 13% contribution factor by 2006. WorldCom at 6, n.9. Staff's more reasonable factor of 10.6% is, as discussed above, subject to substantial downward adjustment.

[16] USTA provides only a high-level assertion on this issue, with no support at all. USTA's musings will not be further referred to here.

As for the supposed causes of the death spiral, AT&T (at 13) cites a number of one-time events that will impact the fund. AT&T makes no attempt to estimate the impact of these factors. All of these factors appear to be reflected in the Staff Study.

AT&T also cites (at 15-17) the (at this point almost "traditional") argument that increased bundling of services hurt the fund because determining the interstate portion of the bundle is difficult. Neither AT&T nor any other carrier attempts to quantify the magnitude of the impact of increased bundling. See NASUCA Comments at 6-7.

AT&T does present a chart that shows contribution factors ranging from 8.7% to 15.8%, within three years of a contribution factor of 9.3%. AT&T at 20. By contrast, the Staff Study begins in 2003 with 9.3%, and has a factor of 10.6% for 2006 and 11.4% for 2007. As previously discussed, this is hardly catastrophic, and can certainly be reduced.

The key flaw in AT&T's arguments against the revenue-based mechanism is that the growth of the fund will increase the connection-based mechanisms just as it will the revenue-based mechanism. The Staff Study shows that under the three proposals, the 2004-2007 increase in the residential household contribution is as follows:

Current	**Proposal 1**	**Proposal 2**	**Proposal 3**
7.7%	7.8%	9.8%	6.3%

The growth in the contribution is between 2.1% and 3.3% per year under any of the scenarios. This is not a "death spiral," and would be even less "deadly" if the measures proposed here were adopted. The current mechanism falls in the middle of the range. Thus AT&T's numbers-based proposal is in this respect only marginally better than the current mechanism, but when all the costs of converting systems, the overall increased burden on residential customers, and the simple illegality of the connection-based mechanisms are considered, there is no reason to abandon the Court-approved revenue-based mechanism.

2. Specific problems with the revenue-based mechanism can be fixed.

Many of the specific reasons that carriers espouse as grounds for jettisoning the revenue-based mechanism are not inevitable features of the mechanism. These "problems" can be addressed without adopting a connection-based mechanism.

Growth in fund: AT&T (at 11) and WorldCom (at 10) identify the continual growth in the fund as a key factor in the "death spiral." This includes growth as a result in the increase in the number of eligible telecommunications carriers ("ETCs"). AT&T at 11. The Commission currently is seeking comment on that very issue.[17] AT&T (at 12) and WorldCom (at 9-10) also identify a number of other Commission dockets that contain the potential for substantial increases to the fund. Of course, the Commission should include the impact on the fund, and thus on the contribution mechanism, as a primary consideration in those dockets. More importantly, as discussed above, the Staff Study shows that the proposed mechanisms are not necessarily any better able to adjust to growth in the size of the fund than is the current mechanism.

Discrimination among carriers: AT&T identifies discrimination between wireless and wireline carriers as a problem with the current mechanism. This is primarily due to the wireless safe harbor. *Id.*; see also WorldCom at 9. This problem can be addressed within the current framework and does not in itself require adoption of a connection-

[17] See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 02-307 (rel. November 8, 2002); *id*., Public Notice, FCC 03J-1 (rel. February 7, 2003).

based mechanism. SBC/BS assert that the current mechanism discriminates in favor of CLECs and against ILECs. SBC/BS at 8. Sprint, on the other hand, finds the current mechanism generally inequitable and discriminatory. Sprint at 4. Again, the key consideration is whether the current mechanism is more or less discriminatory than any of the three alternative proposals. The various oppositions to the alternatives show clearly that those parties who oppose the revenue-based mechanism as discriminatory also oppose specific of the alternatives as also discriminatory. See, e.g., AT&T at 47-53 (Proposal 2 discriminates against non-vertically integrated transport providers); Sprint at 12-15 (ditto); SBC at 15-22 (Proposals 1 and 3 are discriminatory).

Voice over Internet protocol ("VoIP") and broadband services: AT&T (at 18), NRTA (at 12), Qwest (at 2), SBC/BS (at 5-6[18]) and Sprint (at 5) all see the exclusion of these services and the carriers who provide them as a fundamental flaw in the revenue-based mechanism. But the current exemption of these services is no more a necessary part of the revenue-based mechanism than the former 15% wireless safe harbor, which the Commission dispensed with in December 2002. As shown above, the addition of these revenues to the contribution base will have a beneficial impact on the contribution factor. *,*

Bundling: AT&T (at 15-17), SBC/BS (at 7-8) and Sprint at (5-6) despair at what is referred to as "the increasing prevalence of bundled service packages that combine interstate, and international telecommunications service, other telecommunications

[18] SBC suggests that the Commission could use the adoption of a connection-based mechanism as a way to avoid making jurisdictional decisions for IP and broadband services. SBC at 7. The jurisdictional issues involving VoIP and broadband are hardly limited to the universal service front, and cannot -- nor should they be -- avoided.

service, information services and CPE." AT&T at 15.[19] Yet none of these parties attempts to project an actual impact of this supposedly substantial threat. Without such estimates, there can be no real assessment of the incremental effect of bundling. In any event, however, AT&T's absolute statement that "[a]ny proposed method of identifying interstate telecommunications revenues within a bundled package is arbitrary and administratively unworkable" (*id.*) ignores the possibility raised by NASUCA in the initial comments: To the extent that interstate services are bundled with intrastate services, the entire bundle and its revenues could be treated as interstate *for universal service purposes only*.

It should be clear that the problems that opponents of the current mechanism raise can be cured without changing the mechanism to a connection-based scheme. It should also be clear that none of the three connection-based proposals before the Commission is without problems of its own.

H. Conclusion

It remains NASUCA's position that the adoption of a connection-based mechanism would represent a substantial, unnecessary and unreasonable change in the

[19] In the opening paragraphs of the Second Further Notice, the Commission identified two themes that supposedly threatened "the long-term viability of any revenue-based system." The first was that "interstate telecommunications revenues are becoming increasingly difficult to identify as customers migrate to bundled packages of interstate and intrastate telecommunications and non-telecommunications products and services." Second Further Notice, ¶ 5. The absence of quantification in the comments significantly undercuts the Commission's view. The second theme was that "[i]ncreased competition is also placing downward pressure on interstate rates and revenues, which also contributes to the decline in the contribution base." *Id*. The focus of this theme is on IXC rates and revenues; the measures discussed here will be effective to reverse any impact on the contribution base.

way in which USF contributions are collected. It would be far better -- and far easier -- to continue the reform of the revenue-based mechanism, which assesses providers based on customers' usage of -- rather than their access to -- interstate services.[20] Further reforms will highlight the differences between the revenue-based mechanism and the connection-based mechanisms. The Staff Study shows that the Commission should, at the very least, wait to assess the actual impacts of the changes in the revenue-based mechanism resulting from the Report and Order, before moving ahead with substantial structural changes to the USF contribution mechanism.

Examining additional ways to assess interstate telecommunications traffic more accurately would be another means to improve the efficiency of the federal universal service support mechanism. As previously discussed, the Commission must also take steps to ensure that the size of the federal USF stays within reasonable bounds.

The legal reality is that the FCC's assessment for the interstate USF can be imposed only on providers of interstate services. 47 U.S.C. § 254(d); *TOPUC I*, 183 F.3d at 448. Assurance of continued sufficient USF funding (Further Notice, ¶ 15) has little to do with the structure of the collection mechanism. The three Commission proposals do not ensure adequate funding; on the other hand, the current structure does not necessarily make adequate funding more difficult.[21] None of the commenters critical of the revenue-based mechanism have shown that their preferred mechanism will be able better to adjust

[20] Although Section 254(d) requires "[e]very telecommunications carrier that provides interstate telecommunications services" to contribute to universal service, Commission policy up until now has allowed this obligation to be passed on to customers. NASUCA has opposed this misapplication of the law in the past and continues to do so in this proceeding.

[21] AT&T says that a revenue-based mechanism will be "inexact." AT&T at 7. This implies a degree of precision for the connection-based mechanisms that none of the comments support.

to growth in the fund. This is true for whichever of the three proposals, or variant of the three, they support.

Most importantly, the Staff Study highlights the lack of support in the record for the need for the structural change to a connection-based mechanism. The opponents of the revenue-based mechanism have failed to put support for the notion of the "death spiral" into the record.

The Commission continues to seek comment on the adoption of mechanisms that focus on access to the interstate system, rather than usage. A connection-based mechanism should actually be termed an "access-based mechanism," because it assesses consumers equally based on the *capability* to use interstate services and produce interstate revenues for carriers, rather than the usage of those services. No such change is necessary or warranted.

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April 18, 2003

Appendix

Schedule of changes made to the Revenue-Based Methodology of the FCC USF Staff Study to test sensitivity of the contribution factor.

1. Assumed 2007 "Total contribution base" of $80B (average of 2003-2005.)
    a. Increased each 2007 monthly "Total Base Revenues" by 4.5%: revenue tab: BO173..BZ173.

2. Limit 2007 "Adjusted universal service funding requirement" to 20% growth over 2002. (The funding requirement in the staff study increases by 25.97% in 2007 over 2002.)
    a. Applied 0.9526 to "Quarterly with new requirements".
        i. For January, April, July and October 2003: factors tab: S8, V8, Y8, AB8.
        ii. For January 2006-October 2007: factors tab: BC8, BF8, BI8, BL8, BO8, BR8, BU8, BX8.
    b. Applied 0.9526 to "Quarterly without addition of new requirements".
        i. For January 2004-October 2005: factors tab: AE7, AH7, AK7, AN7, AQ7, AT7, AW7, AZ7.

3. Changed assumption of actual interstate wireless revenue.
    a. Scenario #1: Holding constant safe harbor of 28.5%, assumed actual interstate wireless revenues of 25%. (Staff study assumes 22.2% actual interstate wireless revenue.)
        i. Input 24% for 2003 associated with 25% safe harbor and input 26% for 2003 associated with 30% safe harbor: assumptions tab: J334 (24%) and J336 (26%).
    b. Scenario #2: Assumed actual interstate wireless revenues of 30%. (Staff study assumes 22.2% actual interstate wireless revenue.)
        i. Input 30% for 2003 associated with 35% safe harbor: assumptions tab: J338.

4. Included requirement that providers contribute based on cable modem service. (Staff includes estimates of cable modem revenues in its study, but does not include cable modem revenues in the contribution base.)
    a. Input "1": policy tab: G21.

5. Classified IP toll telephone service as an interstate telecommunications service. (Staff includes estimates of IP toll telephone revenues in its study, but does not include IP toll telephone revenues in the contribution base.)
    a. Input "1": policy tab: G25.